Supreme Court, U.S.
FILED
FEB 3 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1139

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1986

ROBERT J. NEVILLE,

Petitioner,

- against -

FRANK A. FINNERTY, JR., Chief Counsel,
KENNETH J. LUCEY, Chairman, and the
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT,

Respondents.

REPLY MEMORANDUM OF PETITIONER

ROBERT J. NEVILLE
Petitioner, pro se
5-31 50th Avenue
Long Island City
New York 11101
(718) 361-7400

January 30, 1987

No. 86-1139

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1986

ROBERT J. NEVILLE,

Petitioner,

- against -

FRANK A. FINNERTY, JR., Chief Counsel, KENNETH J. LUCEY, Chairman, and the GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Respondents.

REPLY MEMORANDUM OF PETITIONER

I am the petitioner, pro se, in this proceeding.

In a letter to the Clerk of this Court dated January 21, 1987, the respondents waived their right to file a brief

in opposition to the petition for a Writ of Certiorari. The letter, signed by Lawrence S. Kahn, Deputy Solicitor General of the State of New York, reads in its entirety:

> Because the petition for certiorari filed in the above-entitled case raises no issues warranting review by this Court, respondent waives the right to file a brief in opposition.

If the respondents had merely waived their right to file a brief, I would probably have no right to reply to their waiver; surely, I would have no desire to reply. They have, however, given a reason for their decision -- a substantial reason which is in fact a legal argument which strikes at the heart of this proceeding. It is an argument which this Court need not take at face value, and it is one to which I believe I have a right to reply.

The respondents have consistently

maintained that the issues raised in this case do not merit judicial review,* and their waiver of January 21st would be unremarkable if they had previously waived the right to submit papers in opposition to mine. This waiver is, however, a striking departure from their conduct in the courts below.

The record in this case is perhaps 200 pages long - in a matter in which there has been no judicial proceeding on the merits - and the respondents have written almost as much as I have. The truth is that they have been fighting me tooth and nail. They have vigorously opposed every motion that I have made (including a motion to stay the proceeding that I brought against them); they have devoted their efforts not to addressing my contentions but to arguing

---

* (The footnote appears on page 6.)

that the State courts should not consider them; they appeared in court one day (as I did) when neither side was expected to attend; they rejected my offer to settle the case by an arrangement in which I would waive my constitutional claims and treat as confidential all information provided by the Grievance Committee; and the Attorney General has in his legal papers in the case charged me with harassment and abuse of the judicial process.

If the respondents could substantiate their assertion that this case raises no issues warranting review by this Court, they would do so; they would spare no expense. In an affidavit dated July 1, 1986 and filed in support of the motion for leave to appeal to the New York State Court of Appeals, I stated that "they (the respondents) are almost always wrong, and yet the courts have gone along with them, because of who they are."

It appears that the right to file a brief was waived not for the reason given, but because the respondents are reluctant to expound any of their arguments in this Court.

January 30, 1987

Respectfully submitted,

ROBERT J. NEVILLE
Petitioner, pro se
5-31 50th Avenue
Long Island City
New York 11101
(718) 361-7400

FOOTNOTE

(from page 3)

The actual demands which were made on the respondents have not previously appeared in the papers filed in this Court. The conclusion of the petition, dated February 20, 1986, in the proceeding under CPLR Article 78 for a judgment in the nature of mandamus appears below. The issues raised by these demands are those which the respondents have consistently maintained do not warrant judicial review.

23. Petitioner has a clear legal right to the information he demands. He asks that the respondents be compelled to perform the duties imposed upon them by the common law, by the Freedom of Information Law, by the Code of Professional Responsibility, and by the Constitutions of the United States and the State of New York and provide that information.

WHEREFORE, petitioner requests that judgment be entered:

(a) Directing the respondents to release to petitioner forthwith, pursuant to the common law and the provisions of the Freedom of Information Law, either by mail or by allowing the inspection and copying

of records by petitioner, all of the material facts concerning the investigation of his complaint against Walter D. O'Hearn, Jr.;

(b) Directing the respondents to reveal to petitioner, as a virtual complainant and in accordance with his constitutional right of access to judicial proceedings, whether there is now pending any proceeding concerning any alleged misconduct by Walter D. O'Hearn, Jr. which was brought to the attention of the Committee by petitioner or concerning which he has furnished evidence;

(c) Directing the respondents to allow petitioner, in accordance with his constitutional right, access to any such pending proceeding;

(d) As a form of interim relief, staying any such proceeding pending the determination of this application;

(e) Directing the respondents to disclose to petitioner forthwith, in accordance with established standards of legal ethics and pursuant to the Freedom of Information Law, full and complete information about their communications with the Appellate Division concerning his applications to that Court while the same were pending; and

(f) Granting petitioner such other and further relief as may be just and proper.

(End of Footnote)